

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1163 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

TRIKAMBHAI G RANWA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
MS KATTHA GAJJAR for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
Notice served upon Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/12/1999

ORAL JUDGEMENT

#. The petitioner abovenamed is the resident of village Damnagar of Lathi Taluka of Amreli district. It seems that certain piece of land was allotted to him. Thereafter, it has been alleged by the Panchayat that the petitioner committed encroachment on Panchayat land, therefore, a direction was given for removal of the encroachment. The matter was carried out in appeal and

revision by the petitioner.

#. It seems that the State Government was approached by way of revision application and the Secretary (Appeals) heard the parties and passed the order dated 16-2-1984 which is at Annexure-A. The said authority remanded the matter to the District Development Officer (for short 'DDO') for fresh consideration in light of the observations made in the order.

#. The matter went to the DDO, Amreli who decided the same on 3-8-1987 and passed the order which is at Annexure-B to the petition. The DDO considered the communication of the Government dated 27-7-1987 and on the strength of the said communication, found that the encroachment could not be regularised and therefore, turned down the said prayer of the petitioner for regularisation of the said encroachment and therefore, directed that the encroachment be removed and the possession be taken over.

#. The petitioner again preferred the revision application before the Additional Chief Secretary (Appeals), Revenue Department. The said authority passed the order which is at Annexure-C observing that the DDO has acted in accordance with the directions of the State Government and therefore, it was not necessary to entertain the revision application of the petitioner, accordingly, the revision application was dismissed summarily by the said authority.

#. Feeling aggrieved by the said order of the Secretary (Appeals), the petitioner has preferred this petition before this Court under Article 226 of the Constitution of India.

#. It has been contended that the Secretary (Appeals) had initially considered that the local people had no objection and there was no other difficulty in regularisation of the encroachment. That this aspect has so far lost sight by the DDO at the time of passing his second order referred to above. That in fact, DDO did not decide the matter on merits but he was influenced by communication received by him from the State Government dated 27-7-87. That even the Secretary (Appeals) also did not decide the revision application on merits but undertook shortcut stating that the DDO had acted upon the direction of the State Government and therefore, the revision application was not required to be entertained. Therefore, the matter was not decided either by the DDO or by the Secretary (Appeals) on merits. Therefore, the

same is required to be quashed and set aside.

#. I have heard the learned advocate for the petitioner and the learned AGP for the respondent No.1 as well as learned advocate for the respondent no.2. Though the respondent No.3 is duly served, none present for the respondent No.3.

#. During the course of hearing and discussion, it was noticed that the DDO had decided the matter on the strength of some communication received by him from the State Government referred to hereinabove. However, that communication was not placed on record as per the case of the learned advocate for the petitioner. He also says that the said communication was not known to him and he could not go through the said communication in order to place his submission before the DDO. That said communication was used against him behind his back.

#. It therefore, appears that the DDO has considered the said communication without allowing the petitioner to know the contents thereof. Even, the Secretary (Appeals) has also taken the said approach saying that the matter has been decided by the DDO on the instructions of the State Government.

##. In view of the above position, it appears that decision recorded as above, do not appear to be independent in nature. Moreover, the petitioner was not afforded an opportunity of being heard on that aspect of the case. In view of that matter, I am of the view that this is a fit case wherein, the matter should be remanded back to the respondent No.1. The respondent No.1 shall afford a reasonable opportunity to the petitioner of being heard and shall decide the matter on merits without being influenced by the order passed by this Court. It would be open to the respondent No.1 to collect further details and materials from the Respondent No.2. The matter shall be decided on merits without being influenced by the orders passed by the DDO, and Secretary (Appeals) and its own order as referred to hereinabove. In case, the matter is not decided in favour of the regularisation of the land, as has been requested by the petitioner and if the encroachment is required to be removed, then, the said order shall not be enforceable for 15 days from its communication in order to enable the petitioner to take further action in the matter.

##. The petitioner shall cooperate with the hearing of the matter and as far as possible, the matter shall be disposed of within 3 months from its receipt by

respondent No.1 and in the mean time, the status quo regarding the possession of the land shall be maintained. In view of above observations and directions, the petition stands partly allowed. No order as to costs.

Date : 3-12-1999 [D.P.Buch, J.]

#kailash#